

**NASD AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between

**Name of Claimant**

Stifel, Nicolaus & Company, Incorporated

and

Case Number 95-04377  
(consolidated with 95-04379)

**Names of Respondents**

Walter H. Johnson and  
Gary Tillman

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**REPRESENTATION OF PARTIES**

Stifel, Nicolaus & Co., Inc. ("Claimant") was represented by Michael J. Runzi, Esq., in-house counsel, located in St. Louis, MO.

Walter H. Johnson and Gary Tillman ("Respondents") were represented by Warren F. Bickford, IV, Esq. of Fellers, Snider, Blankenship, Bailey & Tippens from Oklahoma City, OK.

**CASE INFORMATION**

The Statements of Claim were filed on or about September 7, 1995.

The Submission Agreements of Claimant, Stifel, Nicolaus & Co., Inc. were signed on September 6, 1995 by Michael J. Runzi, Legal Counsel and Assistant Vice President.

The Statement of Answer and Counter-Claim of Respondent, Walter H. Johnson was filed on or about November 2, 1995.

The Submission Agreement of Respondent, Walter H. Johnson was signed on October 31, 1995.

The Statement of Answer and Counter-Claim of Respondent, Gary Tillman was filed on or about November 2, 1995.

The Submission Agreement of Respondent, Gary Tillman was signed on October 31, 1995.

The Response of the Claimant, Stifel, Nicolaus & Co., Inc. to the Respondents' Counter-Claims was filed on or about February 14, 1996.

### HEARING INFORMATION

The hearing was held in Oklahoma City, OK on the following dates:

- June 25, 1996 for two (2) sessions
- June 26, 1996 for two (2) sessions

### CASE SUMMARY

Claimant, Stifel, Nicolaus & Co., Inc. ("Stifel") alleged that Walter H. Johnson ("Johnson") was a registered representative of Stifel from September 12, 1983 until he resigned on June 6, 1995 and Gary Tillman ("Tillman") was registered representative of Claimant from July 13, 1982 to June 6, 1995, the date of his resignation. Claimant contended that on November 4, 1994, the Respondents executed promissory notes and received \$125,000.00 each on or about November 9, 1994. According to the Claimant, Johnson owed \$64,455.62 to Stifel upon resignation and Tillman owed \$74,861.59 pursuant to the terms of the promissory notes. Despite demand, the Respondents have allegedly refused to pay the amounts owing on the promissory notes.

Respondents, Walter H. Johnson and Gary Tillman denied the allegations contained in the Statements of Claim. Respondents contended that in November of 1994, Stifel proposed compensation agreements, not promissory notes, to the Respondents and four other employees of its municipal securities trading department in order to induce them to remain at Stifel despite Stifel's litigation problems, a criminal investigation and an SEC investigation. Respondents claimed that under the compensation agreements, they agreed to continue employment with Stifel through December 31, 1996 while Stifel agreed to compensate each of them with an unconditional \$25,000.00 signing bonus, a \$100,000.00 advance against 1995 net earnings to be paid in November of 1994, and a \$100,000.00 advance against 1996 net earnings to be paid in January of 1996. According to the Respondents, the compensation agreements provided that, in the event they did not generate sufficient net earnings in 1995 and 1996 to repay the advances, any shortfalls would be forgiven. In addition, the compensation agreements allegedly provided that the Respondents were only obligated to repay any outstanding balance of the \$100,000.00 advances only if they resigned or if Stifel terminated them for just cause. On or about May 25, 1995, Stifel sold its Oklahoma operations to Capital West and closed its Oklahoma City office thereby allegedly terminating the

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Respondents. Respondents asserted that Stifel breached the terms of the compensation agreements in that it failed and refused to pay them each the \$100,000.00 advances it was obligated to pay them on January 1, 1996. Respondents further asserted that Stifel deceptively induced them to enter into the compensation agreements and to forgo valuable opportunities thereby damaging Johnson and Tillman in the amounts of \$160,000.00 and \$125,000.00, respectively.

Stifel denied the **allegations** of wrongdoing contained in the Counter-Claims. Stifel specifically claimed that Johnson and Tillman were given the option of continuing their employment with Stifel or Capital West yet Johnson and Tillman decided to resign. Stifel contended that the terms of the promissory notes include that the agreement would be binding on Stifel and its successors and assigns.

### **RELIEF REQUESTED**

Claimant requested an award against Walter H. Johnson in the amount of \$64,455.62 in actual damages and an award against Gary Tillman for the sum of \$74,861.59 plus interest, costs and attorneys' fees. Claimant also requested that the Counter-Claims be denied in their entirety.

Respondent, Walter H. Johnson requested an award in the amount of \$260,000.00 in actual damages and \$160,000.00 in punitive damages plus costs and attorneys' fees. Respondent, Gary Tillman requested an award in the sum of \$225,000.00 in compensatory damages and \$125,000.00 in punitive damages along with costs and attorneys' fees. Respondents also requested that the Statements of Claim be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

Pursuant to the agreement of the parties on or about October 23, 1995 to consolidate NASD Case Number 95-04377 Stifel, Nicolaus & Co., Inc. v. Walter H. Johnson and NASD Case Number 95-4379 Stifel, Nicolaus & Co., Inc. v. Gary Tillman, the cases were consolidated by the Director of Arbitration in accordance with Section 25 (d) of the NASD Code of Arbitration Procedure (the "Code").

On or about May 24, 1996, the Respondents filed a request for leave to amend their counterclaims pursuant to Section 39 of the Code. After reviewing and considering the request and the Claimant's objection, the arbitrators decided that the request was denied.

### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, Stifel, Nicolaus & Co., Inc. is hereby liable for and shall pay to Respondent, Walter H. Johnson the sum of **\$40,000.00** in actual damages;
2. Claimant, Stifel, Nicolaus & Co., Inc. is hereby liable for and shall pay to Respondent, Gary Tillman the amount of **\$40,000.00** in compensatory damages;
3. The Statements of Claim submitted by Claimant, Stifel, Nicolaus & Co., Inc. are hereby denied in their entirety;
4. All relief not specifically granted herein is hereby denied in its entirety; and
5. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

### FORUM FEES

Forum fees are calculated at the rate of **\$1,000.00** per hearing session. There were four (4) hearing sessions x **\$1,000.00** = **\$4,000.00** in forum fees. Pursuant to Section 44(b) of the Code of Arbitration Procedure, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fees in the total amount of **\$1,000.00**, the surcharges imposed pursuant to Section 45 of the Code and the hearing session deposits in the total amount of **\$1,200.00** previously submitted by Stifel, Nicolaus & Co., Inc. The NASD shall also retain the claim filing fee of **\$500.00** and the hearing session deposit of **\$750.00** previously submitted by Respondent, Walter H. Johnson as well as the **\$500.00** claim filing fee and **\$750.00** hearing session deposit previously filed by Respondent, Gary Tillman. Claimant, Stifel, Nicolaus & Co., Inc. is hereby liable for and shall pay to Respondent, Walter H. Johnson the sum of **\$1,250.00** and shall pay to Respondent, Gary Tillman the amount of **\$1,250.00** as reimbursement. Claimant, Stifel, Nicolaus & Co., Inc. is hereby liable for and shall pay to the NASD the sum of **\$1,300.00** in additional forum fees.

**Fees are payable to the National Association of Securities Dealers, Inc.**

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Arbitrators' Signatures:

Dated:

James Mervin Benson, Esq.  
James Mervin Benson, Esq.  
Industry Arbitrator, Presiding Chair

July 26, 1996

Edward O'Rourke  
Edward O'Rourke  
Industry Arbitrator

August 1, 1996

Ira Painton  
Ira Painton  
Industry Arbitrator

July 25, 1996

Date served by the NASD:

August 5, 1996